

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, July 5, 2012
REGULAR MEETING
6:30 p.m.

I. CALL TO ORDER – The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE – Chair Toerge

III. ROLL CALL

PRESENT: Ameri; Brown, Hillgren, Kramer, Myers, Toerge, and Tucker

Staff Present: Kim Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Javier Garcia, Senior Planner; Associate Planner Jaime Murillo; and Jim Campbell, Principal Planner

IV. PUBLIC COMMENTS

Chair Toerge invited comments from those in the audience who wished to address the Commission on other than Agenda items.

Jim Mosher commented on the Planning Commission's schedule noting the current requirement for selection of officers. He commented on missing elements within the noticing of the Banning Ranch project.

Dan Purcell commented on the use of marketing stickers by a new restaurant, Dive Bar, and reported finding the stickers on signs in the City and referenced the money paid by taxpayers for graffiti and sticker removal.

V. REQUEST FOR CONTINUANCES

Community Development Director Kimberly Brandt noted no requests for continuances at this time.

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF JUNE 21, 2012

Community Development Director Brandt reported that changes to the minutes, suggested by Commissioner Kramer, are being incorporated into the minutes and requested postponing Item No. 1 to later on the agenda.

VII. PUBLIC HEARING ITEMS

ITEM NO. 2 7-ELEVEN USE PERMIT (PA2012-025)
Site Location: 4221 MacArthur Boulevard, Suite B-01

Javier Garcia, Senior Planner presented a PowerPoint presentation and details of the report addressing location, traffic study performed to update/revise the Phasing Ordinance to accommodate the change in the allocation of commercial uses on the site, reduced parking requirement for the project, findings, and recommendations.

Chair Toerge invited the applicant to address the Commission.

Ralph Deppisch, consultant for the applicant, provided a PowerPoint presentation and addressed alcohol sales, personnel training, computer-generated age-restrictive requirements for selling beer, wine and tobacco, upscale interior design, security, parking and traffic, aesthetics, information regarding the franchise, 7-Eleven guiding principles, examples of product offerings, hours, lighting, litter and graffiti control.

Interested parties were invited to address the Commission on this item.

Jim Mosher commented regarding changes in the project including the approved curb cut, the call for bigger signs to attract motorists, impacts on traffic and findings regarding traffic and proximity to residential properties.

Dan Purcell addressed "project creep" and "scope creep". He felt that the proposed project is different than what was originally approved.

There being no others wishing to address the Commission, Chair Toerge closed public comments for this item.

Commissioner Myers stated he voted for this project when originally presented and felt that the improvements would improve the fortunes of nearby businesses and that the use made sense. He expressed disappointment at the increased number of trips generated by the project and reduction in the food service component of the project. He stated no objection of 7-Eleven but objected to the reallocation of commercial uses at the project and the resulting increase in trips.

Commissioner Tucker noted that the project has been approved and noted that it is still consistent with the Zoning and General Plan for the property. He added that the purpose of a Use Permit is to make certain that the types of uses that have the prospects of being incompatible with neighbors, are looked at and conditions are placed so that they become compatible. He addressed the TPO Ordinance and referenced Table No. 7 within the report and noted that there are no unacceptable levels of service indicated, although traffic trips will increase. He indicated that there is no basis for disapproving the project on increased traffic from a change of allocation of the types of uses. Commissioner Tucker stated that he will support the project.

Commissioner Brown commented on the possibility of future residential development in the area.

Vice Chair Hillgren felt that the use is appropriate for the site, agreed with Commissioner Tucker but expressed concerns with the short driveway from MacArthur into the center and felt that may present a safety issue. He indicated that he will not support the item.

Commissioner Kramer reported that he voted for the project, initially, and will be supporting the proposed CUP.

Commissioner Ameri expressed concerns with the increased traffic and its impact.

Motion made by Commissioner Kramer and seconded by Commissioner Brown, and carried (4 – 3), to adopt a resolution, approving Use Permit – Conditional No. UP2012-003, and finding that, based on the weight of the evidence in the administrative record, including Traffic Study No. TS2011-002 and that Traffic Study No. TS2012-001 complies with the Traffic Phasing Ordinance in support of the proposed project.

AYES:	Brown, Kramer, Toerge, and Tucker
NOES:	Ameri, Hillgren, and Myers
ABSTENTIONS:	None
ABSENT (Excused):	None

Chair Toerge redirected the meeting to Item No. 1 under Consent Items.

ITEM NO. 1 MINUTES OF JUNE 21, 2012

Commissioner Kramer commented on his proposed changes to the minutes, distributed under separate cover.

Deputy Community Development Director Brenda Wisneski proposed changes as well as Commissioner Tucker who addressed the elimination of a \$30 million cost estimate out of the Statement of Overriding Consideration for the work to clean up the oil problem, noting that no public money would be spent to clean up the oil site. He requested the inclusion of the same to the minutes.

Interested parties were invited to address the Commission on this item.

Jim Mosher referenced the handout of comments submitted by Commissioner Myers regarding modification of page 4 of 12, inserting "Deputy" to the title of Community Development Director Wisneski.

Community Development Director Brandt noted that the communication was from her and therefore the minutes should reflect "Community Development Director Brandt". Commissioner Myers agreed to the change. Commissioner Tucker indicated agreement to include it as part of the motion and Commissioner Brown agreed.

There being no others wishing to address the Commission on this item, Chair Toerge closed public comments.

Motion made by Commissioner Tucker and seconded by Commissioner Brown, and carried (6 – 1), to approve the minutes of June 21, 2012, as amended.

AYES:	Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES:	None
ABSTENTIONS:	Ameri
ABSENT (Excused):	None

ITEM NO. 3 NORTH NEWPORT CENTER PLANNED COMMUNITY AMENDMENT (PA2012-020)
Site Location: Fashion Island, Block 600, Block 800 and portions of Blocks 100, 400, 500 and San Joaquin Plaza of Newport Center

Associate Planner Jaime Murillo presented a PowerPoint presentation and details of the report including background, original 2007 approval of the North Newport Center Planned Community (NNCPC) Development Plan by the City Council, the Development Agreement and associated traffic study and the approval of an Affordable Housing Implementation Plan. He presented details of the proposed amendment to the NNCPC Development Plan, including increasing the residential development allocation from 430 units to 524 units and allocating the units to San Joaquin Plaza. He noted that all existing development regulations will remain unchanged and that the amendment primarily involved an increase in residential development intensity. He reported that of the 94 unit increase, 15 units are allowed by the General Plan but are unassigned. The remaining 79 units would result from the conversion and transfer of un-built development intensity which is currently allowed for under the General Plan at the Newport Beach Marriott site. He noted that the hotel is currently developed with 532 hotel rooms and that the General Plan allows for up to 611 hotel rooms to be developed and that the applicant is proposing to convert those un-built hotel rooms and transfer them to the NNCPC boundaries. He noted transfer of development intensities are allowed under the General Plan. He presented findings and reported on a trip generation comparison by the City to evaluate whether the conversion would result in increased development intensity and noted the results. He also presented the results of the traffic study in support of the findings.

Mr. Murillo addressed the amendment to the existing Development Agreement noting that it will vest the development rights for the 94 units and extend the term for 20 years from the effective date of the approval. In addition, the applicant will be providing provisions for affordable housing and monetary public benefits.

In response to Vice Chair Hillgren's inquiry regarding the public benefits, Mr. Murillo affirmed that they are solely for the proposed 94 units.

Mr. Murillo presented details of the Affordable Housing Implementation Plan (AHIP) and noted that the applicant has the ability to record affordable housing covenants for a 30-year term on existing apartment units owned by the applicant and that as part of the amendment, the applicant will increase the number of units to be provided depending on the designation of units for very-low-income, low-income, or moderate income households. He reported that a water supply assessment was prepared as required by the State Senate Bill 610 and addressed compliance with CEQA requirements. He referenced a map that was distributed under separate cover that should be added as an exhibit to the Amendment to the Development Agreement.

Assistant City Attorney Leonie Mulvihill identified the map provided by Mr. Murillo as Exhibit B and referenced Exhibit C; the Affordable Housing Implementation Plan (AHIP).

Vice Chair Hillgren addressed consideration of the hotel units under the Newport Beach Country Club application and noted that the Commission worked hard to protect and preserve them and stated there is good value to them in terms of assets for the community and a desire to have them developed at Newport Center. He inquired regarding ownership by the Irvine Company and asked regarding the possibility of extending the units for 20 years, which is in contrast to the General Plan provision regarding desirability of mixed-use developments.

Community Development Director Brandt referenced the earlier conclusion of the Newport Beach Country Club application noting that there was a proposal to take five of the 20 units remaining in Newport Center that were unassigned and bringing them into the tennis club property as well as to transfer 27 of the hotel rooms from the Marriott site to the tennis club location. At that time, the Marriott organization was opposed to the proposal. Through the course of the numerous public hearings, there was a proposal brought forward to convert the tennis court entitlement into the needed hotel rooms. Staff made it clear that the 79 hotel rooms were not a vested right to the Marriott Hotel Corporation and that there was no development agreement associated with those hotel rooms. Subsequent to that application being heard by Council, the current application is presented to the Planning Commission to transfer the 79 hotel rooms and convert them to residential units. She reported that staff has received no objections from Marriott regarding the current proposal. She added that it has always been staff's position the units can be moved within Newport Center and she stated that the property owner's permission is not required.

Chair Toerge invited the applicant to address the Commission on this item.

Dan Miller, representing the Irvine Company, presented a brief history of the matter including an agreement with Mr. O'Hill relative to the Newport Beach Country Club project. He addressed an agreement with the Marriott in return for the Irvine Company's support of their application through the County planning process in Newport Coast. He noted that additional hotel units will be built in Newport Coast, not Newport Center. He addressed the public benefit fees and noted that the Irvine Company will advance \$2.5 million of that fee for the parks, whether they pull permits or not. Mr. Miller reported the intent to move forward with the residential project in 2014. He addressed previous approval of the AHIP and increases with the proposed amendment. He stated agreement with the findings in the staff report and offered to respond to questions.

Commissioner Kramer requested clarification of the calculation of public benefit fees as well as additional details on the Bayside Drive walkway connection.

Mr. Miller reported that the starting point used in calculating the public benefit fees was the per-unit fee proposed in 2007 and advancement of those fees. Regarding the Bayside Drive walkway connection, he reported that it was suggested by two Members of Council and involves a connection to the bridge to Balboa Island.

Commissioner Kramer asked regarding inclusionary housing as part of the affordable housing provision.

Mr. Murillo reported a previous adoption of the City's Inclusionary Housing Ordinance which was intended to implement the housing goal in the General Plan and referenced a court case that found that application of Inclusionary Housing Ordinances to rental housing projects violated a rent-control act. When the Ordinance was presented to Council, it was revised to only apply to subdivision/for-sale developments. He noted that in this case, it is not known if the units will be rental or for-sale condominiums and that is why the provision of affordable housing was added to the development agreement.

Chair Toerge inquired regarding no public benefit fees associated with the previous 430 units.

Mr. Miller noted that it was part of the original Development Agreement and addressed the public benefit fees.

Mr. Murillo added that there are also a number of roadway improvements and dedication of land that were provided as public benefits in the original Development Agreement.

Interested parties were invited to address the Commission on this item.

Jim Mosher thanked Vice Chair Hillgren for his inquiry regarding the 79 hotel units and expressed concerns regarding future changes to the Municipal Code not applying to the subject Development Agreement. He questioned the total residential entitlement referred to within the staff report.

There being no others wishing to address the Commission, Chair Toerge closed public comments for this item.

Mr. Murillo reported that the 245 units that are allocated to Block 800 in the NNCPC reflect the existing Colony apartment development.

Commissioner Tucker stated that the comment regarding future changes to the Municipal Code is typical of development agreements, noting that the trade-off is the public benefits to be provided by the developer and is applicable only to planning fees and development regulations. He noted that Newport Center is a major area to plan and felt the proposal is consistent with the ultimate plan for Newport Center and felt it is good for all interested parties.

Assistant City Attorney Mulvihill suggested that separate motions be taken on the recommended actions.

Commissioner Ameri inquired regarding the motion protocol.

Assistant City Attorney Mulvihill reported the need for clarity regarding actions taken, especially with large projects that involve various elements. She noted that there are findings for each specific item and the importance of affirming that each finding was acted upon.

Commissioner Kramer commented and expressed his support for the project.

Motion made by Commissioner Tucker and seconded by Commissioner Ameri, and carried (7 – 0), to adopt the draft resolution recommending the City Council adopt Addendum No. 2 to the Program Environmental Impact Report (SCH No 2006011119) for the City of Newport Beach General Plan 2006 Update and the Water Supply Assessment prepared for the project.

AYES:	Ameri, Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES:	None
ABSTENTIONS:	None
ABSENT (Excused):	None

Motion made by Commissioner Tucker and seconded by Commissioner Ameri, and carried (7 – 0), to adopt the draft resolutions recommending the City Council approve Transfer of Development Intensity No. TD2012-002, Planned Community Development Plan Amendment No. PD2012-001, Amendment to Development Agreement No. DA2007-002, Traffic Study No. TS2012-004, and the proposed Amendment of the Affordable Housing Implementation Plan.

AYES:	Ameri, Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES:	None
ABSTENTIONS:	None
ABSENT (Excused):	None

ITEM NO. 4 MARINA PARK PROJECT (PA2012-079)
Site Location: 1600 W. Balboa Boulevard

Principal Planner Jim Campbell presented details and provided a PowerPoint presentation of the report addressing the previous approval of the project by the City Council, the location, and a description of the project. He noted that the architectural tower of the building modified by the Coastal Commission. He referenced preparation of a certified EIR and the conclusion that there were less than significant impacts to public views. He presented the site plan, the tower/lighthouse feature and modification by the Coastal Commission of the height. He noted that the Coastal Commission was concerned about setting precedence for future projects and he presented details of the proposed amendment. Mr. Campbell noted a change in the proposed amendment from the draft presented in the staff report creating specific language to support the proposed 71-foot high tower and including a purpose statement. Mr. Campbell indicated staff's recommendation for approval.

In response to an inquiry from Chair Toerge, Mr. Campbell reported that the proposed building is 35 feet.

In response to Commissioner Tucker's request, Mr. Campbell indicated that the design process was extensive and it was publically vetted.

Responding to Vice Chair Hillgren's inquiry regarding the tower height, Mr. Campbell noted that the EIR evaluated a 73-foot high tower but that the current city-approved design calls for 71 feet.

Commissioner Ameri inquired regarding whether the item must return to the Coastal Commission if the Planning Commission approves the height of the tower at 71 feet.

Mr. Campbell reported that the amendment requires review by the Coastal Commission and if approved by the City. If the Coastal Commission approves the amendment, the project itself will require a subsequent review. He added that staff will try its best to expedite the process.

Assistant City Attorney Mulvihill reported that she was at the Coastal Commission hearing where they considered the matter and approved the project with the exception of the large architectural element. She added that they had a problem relative to the height limit in the City's Zoning Code and stated approval of the amendment should not impede approval of the project. She added that part of the process is to have the Planning Commission review it.

Interested parties were invited to address the Commission on this item.

Jim Mosher felt the building would look as good with the tower as without it and he commented about a statement made by the City's consultant to the Coastal Commission indicating that an existing tsunami warning horn would be removed from its current location and placed on the proposed tower. He questioned how that would work.

Dan Purcell commented on the tower as being a faux lighthouse and expressed the opinion that this project will be used to justify other projects. He also expressed concerns with maintenance.

Catherine Callahan stated her agreement with the previous speakers and she felt that public opinions were overlooked and that the tower is overkill and would be an eyesore.

Elliott Vaughn agreed with previous speakers and addressed placement of the tsunami warning horns noting the City's consultant mentioned that it would be placed above the tower. He requested that language be added to reflect that nothing over 71 feet should be built or added.

Mr. Campbell reported that the project does not include a specific design to incorporate the tsunami warning system or any other communications equipment. The policy sets for the ability to potentially use the tower for the tsunami or communications equipment in the future.

Commissioner Ameri stated agreement with specifying that nothing should be built or installed above 71 feet.

There being no others wishing to address the Commission, Chair Toerge closed public comments for this item.

Commissioner Brown indicated he will support the project, primarily because of the iconic value.

Motion was made by Commissioner Kramer and seconded by Commissioner Brown, and carried (7 – 0), to adopt a resolution recommending the City Council approve the amendment to the Coastal Land Use Plan No. LC2012-002.

Mr. Campbell requested clarification regarding the motion such that the amendment would include the revised language presented by the separate memorandum and not the language within the staff report or draft resolution. Commissioner Kramer and Brown indicated that understanding.

Discussion followed regarding the possibility of considering increasing the height "up to 73 feet."

Commissioner Kramer and Commissioner Brown amended the motion to include language in the resolution placing a height limit to not over 73 feet.

Commissioner Ameri suggested adding language indicating "a minimum of 71 feet and up to a maximum of 73 feet".

Substitute motion by Commissioner Ameri to add language indicating "a minimum of 71 feet and up to a maximum of 73 feet". The substitute motion failed for lack of a second.

Commission Vote on the motion.

AYES:	Ameri, Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES:	None
ABSTENTIONS:	None
ABSENT (Excused):	None

VIII. OTHER BUSINESS

ITEM NO. 5 REVIEW OF RULES OF PROCEDURES OF THE PLANNING COMMISSION (PA2012-065) Site Location: N/A

Community Development Director Brandt introduced the item noting it has been continued several times and addressed direction by the Planning Commission. She reported that staff incorporated the comments provided by the Planning Commission and presented a draft copy of the By Laws with the changes. She asked for additional feedback so that staff can return to the Planning Commission with a final copy of the By Laws at its next meeting for formal adoption.

She affirmed that typically, the election of officers is scheduled for the first meeting in July, but that it will be set for the Planning Commission's next meeting.

Vice Chair Hillgren inquired regarding the length of time recordings of meetings are required to be kept.

Assistant City Attorney Mulvihill reported that there is a requirement under State law, but that the City has expanded that requirement in its records retention policy. She stated that is City policy and not required in the By Laws.

IX. STAFF AND COMMISSIONER ITEMS**ITEM NO. 6 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**

Community Development Director Brandt announced that Commissioner Tucker was re-appointed to the Planning Commission for a term of four years and reported that the City Council took action on the Ocean Boulevard Lot Merger project, which was approved with some modifications to what the Planning Commission reviewed. Ms. Brandt reported that the Newport Banning Ranch Project will be heard by the City Council on Monday, July 23, 2012, during a special meeting beginning at 6:00 p.m.

ITEM NO. 7 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT.

None

ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

Vice Chair Hillgren reported that he will not be in attendance at the Planning Commission meeting of July 19, 2012.

X. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 8:20 p.m.

The agenda for the Regular Meeting was posted on June 29, 2012, at 10:34 a.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Michael Toerge, Chairman

Fred Ameri, Secretary